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No. 102

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In the Supreme Court of the United States

OCTOBER TERM, 1960

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California,

Petitioners,

v.

STATE OF OREGON, acting by and through the State Land Board,

Respondent.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California,

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STATE OF OREGON, acting by and through the State Land Board,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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No. 958

In the Supreme Court of the United States

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STATEMENT OF THE CASE

The decedents Joe Stoich and Muharem Zekich died intestate in the State of Oregon in December 1953, leaving estates consisting entirely of personal property.

These decedents were residents of Oregon and their American citizenship is not questioned. Their sole surviving relatives were residents and nationals of Yugoslavia. These relatives, together with the Consul General of Yugoslavia at San Francisco, their attorney in fact, are the petitioners here. There being no other relatives of the decedents legally qualified to inherit, the State of Oregon filed petitions in the Circuit Court of the State of Oregon for Multnomah County for the escheat of the estates of the decedents under the provisions of ORS 111.070. App. A, p. 21, infra. The petitions for escheat were opposed by answer of the petitioners here. Because the basic facts and questions were substantially the same, the escheat proceedings in the two estates were consolidated for trial. The trial court found against the State of Oregon on its petitions for escheat, and the State of Oregon appealed to the Oregon Supreme Court.

Upon hearing the consolidated appeals, the Oregon Supreme Court reversed the decrees of the circuit court and held that the provisions of ORS 111.070, requiring that American citizens receive payment of their foreign inheritances by delivery within the United States, did not infringe upon the treaty between this country and Yugoslavia and that the Yugoslavian Foreign Exchange Law and Regulations denied American citizens an unqualified and enforceable right to receive delivery of their Yugoslavian inheritances. The court further held that failure to prove the legal existence of the rights required by ORS 111.070 defeated claims of succession

to the Oregon inheritances. *In re Stoich's Estate*, (1960) — Or. —, 349 P.(2d) 255, 268.

In reaching its decision, the Oregon Supreme Court gave full consideration to Article II of the Treaty of Commerce between the United States of America and Serbia concluded in October 2/14, 1881 (22 Stat. 963, Treaty Series 319), as well as the Bretton Woods International Monetary Fund Agreement (60 Stat. 1401). Both were cited in petitioners' Oregon Supreme Court brief and both were argued by petitioners' counsel in oral argument.

Notwithstanding implications in petitioners' petition for writ of certiorari, the Oregon Supreme Court in its opinion quoted in full Article II of the United States-Serbian Treaty of 1881, as follows:

> "In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.
>
> "Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.
>
> "They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their

> goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state." *In re Stoich's Estate,* supra, — Or. —, 349 P. (2d) 255, 263.

In construing the treaty, the Oregon court referred to *Clark v. Allen,* 331 U.S. 503, 91 L. Ed. 1633, recognized by petitioners as "the cornerstone of the entire reciprocal inheritance rights structure" (Resp. Br., p. 16, Or. Sup. Ct.), in which the United States Supreme Court reviewed the comparable inheritance provisions of Article IV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of December 1923 (44 Stat. 2132). Finding the language of Article II of the Yugoslavian treaty to have the same import and meaning as that of Article IV of the German treaty construed in *Clark v. Allen,* the Oregon court applied the principles of that case and held that the Yugoslavian treaty did not cover succession of property from an American citizen in the United States to a Yugoslavian citizen in Yugoslavia.

To dispel any doubt that the Oregon court may have given inadequate consideration to the case of *Clark v. Allen,* supra, or Article IV of the German treaty in construing the Yugoslavian treaty, we quote at length from the opinion as follows (*In re Stoich's Estate,* — Or. —, 349 P. (2d) 255, 265):

> "In Clark v. Allen, supra, the court was called upon to construe Article IV of the Treaty of Friendship, Commerce and Consular Rights made with Germany December 8, 1923 (44 Stat. 2132). It had dif-

ferent provisions relating to the testamentary disposition of realty and personalty. Article IV of the Treaty, which is the provision of our interest, contained the following provisions as to the disposition of personalty:

> "'*Nationals of either High Contracting Party* may have full power to dispose of their personal property of every kind *within the territories of the other*, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or nonresident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the *nationals of the High Contracting Party within whose territories* such property may be or belong shall be liable to pay in like cases.' (Emphasis ours.) (331 U.S. at page 514, 67 S. Ct. at page 1437, 91 L. Ed. at page 1644)

"We are of the opinion that the following words and phrases found in the German Treaty of 1923: 'Nationals of either High Contracting Party * * * within the territories of the other' are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, 'citizens of the United States in Serbia and Serbian subjects in the United States,' a phrasing which the defendants ascribe to Victorian English.

"In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. Mr. Justice Douglas, speaking for the court, says at page 515 of 331 U.S., at page 1438 of 67 S. Ct., at page 1644 of 91 L. Ed.:

> "'* * * In case of personalty, the provision governs the right of "nationals" of either contract-

ing party to dispose of their property within the territory of the "other" contracting party; and it is "such personal property" that the "heirs, legatees and donees" are entitled to take.

" 'Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in Frederickson v. State of Louisiana, 23 How. (US) 445, 16 L. Ed. 577, supra, and which bears out the construction that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

" 'We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *'

"The Supreme Court of California also had before it the provisions of Article II of the Treaty of 1881 in the Arbulich case, supra, which were there urged, as here, as applicable and controlling in favor of the appellant brother. Concerning this, Mr. Justice Schauer, who spoke for the court, stated:

" 'Appellant contends, nevertheless, that the provisions of Article II of a treaty entered into in 1881 between the United States and the Kingdom of Serbia, 22 Stat. 964, (of which the present Republic of Yugoslavia is the successor government) and certified by the Secretary of State of the United States as remaining in full force and effect between this country and Yugoslavia, are ap-

plicable and controlling in appellant's favor on the issue of reciprocity. It may be noted that the first paragraph of Article II seemingly treats only of "citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslav] subjects in the United States," rather than, as is the situation in the present case, of a United States citizen who dies in the United States and leaves property to a Yugoslav subject who is *in Yugoslavia*, and therefore is not here applicable. Even if we assume its applicability in that respect, however, the rights granted are only those given by each of the contracting nations "to the subjects of the most favoured nation," and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code.' 257 P. 2d at page 437.

"In that holding, we find the California court, and we think rightly, following the pattern of interpretation accorded the German treaty before the United States Supreme Court six years before in Clark v. Allen, supra. We take notice that a writ of certiorari in Arbulich was denied by the Supreme Court of the United States (Arbulich v. Arbulich, 346 U.S. 897, 74 S. Ct. 219, 98 L. Ed. 398) and later a petition for leave to file a petition for rehearing was also denied (347 U.S. 908, 74 S. Ct. 426, 98 L. Ed. 1066).

"If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of Clark v. Allen, supra, have us interpret the words 'in Serbia' and 'in the United States,' as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights

similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881, and as also held in Arbulich's Estate."

Again to eliminate any doubt that the Oregon court may have failed to give full consideration to the Bretton Woods International Monetary Agreement, we again quote from *In re Stoich's Estate*, — Or. —, 349 P.(2d) 255, 267, as follows:

"The protective solicitude by our legislature demonstrated by the provisions of ORS 111.070 in behalf of Oregon citizens is extended to alien heirs residing in foreign countries who inherit in Oregon In short, the net result when observed, at least on the part of the state of Oregon, brings ORS 111.070 more in harmony with the spirit of the international agreements as contended for by defendants than their interpretation of those treaties demand. In effect, subsections (b) and (c) of § (1) of that statute place local heirs and alien heirs on a parity by insuring to each the full measure of their respective inheritances. We deem both of these conditions a reasonable exercise of legislative power, and in no sense trespassing upon any international treaty or agreement brought to our attention, but to the contrary implementing the spirit, if not the letter, of such accords.

"In arriving at our conclusions, we have given attention to the terms of what is commonly known as the Bretton Woods Agreement of 1944, cited by the defendants. Yugoslavia was one of the 44 participating governments at the United Nations Monetary and Financial Conference of that year. Later, it became one of the signatories to the Articles of Agreement formulated as the final act of the conference. The

major features of the final document provided for establishment of the International Monetary Fund and of the International Bank for Reconstruction and Development. It is common knowledge that the conference was motivated by the then prevailing international apprehension world economy would suffer seriously as an aftermath of World War II unless some devices to stabilize it were quickly undertaken by the world powers. This thought is clearly affirmed by Article I of that agreement, wherein its controlling purposes and objectives are stated.

"The defendants, however, point to its Art. XIV, § 4 and Art. XI § 2, which provide sanctions against any member nation which imposes foreign exchange restrictions contrary to the provisions of the agreement. Although not fully developed by defendants' argument, the inference is that a foreign exchange system of controls and regulations was established thereby which would nullify the restrictive character of the Yugoslav Foreign Exchange Law and implementing Regulations. The contrary is clearly evident from a reading of the entire agreement. It is replete with expressions recognizing the want of economic parity between the signing nations and the relative difficulties of some of the lesser nations in maintaining a sound monetary system, and definitely places them in an exceptional class. We turn for the moment to one of the very articles to which they point. It is significantly captioned 'Transitional Period.' Section 2 of that article is subcaptioned 'Exchange Restrictions.' Its provisions are spread in marginal note.

"Article VII, § 3(b) of the agreement is also to the same tenor in recognizing that some nations will find the need to 'impose limitations on the freedom of exchange operations.'

"The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense an international recognition that

some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria (see State Land Board v. Rogers, supra)."

QUESTIONS

In substance the questions presented by the petition for writ of certiorari appear to be:

(1) Whether Article II of the Treaty of Commerce between the United States of America and Serbia concluded in 1881 applies to succession of property where a national of one country dies within the country of which he is a citizen and leaves property to a resident and national of the other country; and

(2) Whether foreign exchange control laws imposed or maintained by a foreign country consistently with the International Monetary Fund Agreement preclude a state of the United States from giving effect to its law making the right of succession of nonresident alien heirs dependent upon the right of American heirs to receive payment within the United States of their foreign inheritances.

ARGUMENT

I

The construction of Article II of the Treaty of Commerce between the United States of America and Serbia concluded in 1881 (22 Stat. 63) is governed by the case of Clark v. Allen, 331 U.S. 503, and related cases. The treaty provision applies only to citizens of the United

States in Yugoslavia, or citizens of Yugoslavia in the United States. It covers both the disposition and acquisition of property by citizens of one country in the territory of the other, but it does not apply to the nationals of either within their own country.

Substantially the same question as the first was presented to this court by the petition for writ of certiorari in *Arbulich v. Arbulich*, 346 U.S. 897, 98 L. Ed. 398, 74 S. Ct. 219; 247 U.S. 908, 98 L. Ed. 1066, 74 S. Ct. 426, in which one of counsel for petitioners here was also of counsel for petitioner in that case. Both the writ of certiorari and the later petition for leave to file a petition for rehearing were denied.

The case of *Clark v. Allen*, supra (331 U.S. 503), construing Article IV of the treaty between the United States and Germany (44 Stat. 2132), and such cases as *Frederickson v. Louisiana*, 23 How. (U.S.) 445 (Convention between the United States and Wurttemberg, 8 Stat. 588); *Petersen v. Iowa*, 245 U.S. 170 (Treaty between United States and Denmark, 8 Stat. 340, 11 Stat. 719); *Duus v. Brown*, 245 U.S. 176 (Swedish Treaty, 8 Stat. 60, 232, 346); and *Skarderud v. Tax Commission*, 245 U.S. 633 (Norwegian Treaty, 8 Stat. 60, 346), control the construction of the language used in Article II of the Yugoslavian treaty.

In *Clark v. Allen*, supra (331 U.S. 503, 515-517), similarly as in the other cases cited, the court held the treaty did not cover a situation where a citizen of one country residing at home disposes of his personal property there in favor of a citizen or subject of the other.

The court pointed out that rights of succession to property are governed by local law, except where there may be some overriding federal policy such as a treaty, but that there was no treaty provision covering the right of succession to personal property.

The text of Article IV of the German treaty (44 Stat. 2132) construed in *Clark v. Allen*, supra (331 U.S. 503) reads:

> "*Nationals of either High Contracting Party* may have full power to dispose of their personal property of every kind *within the territories of the other*, by testament, donation, or otherwise, *and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof*, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases." (Emphasis supplied)

Article II of the Yugoslavian treaty (22 Stat. 963) reads:

> "In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, *citizens of the United States in Serbia and Serbian subjects in the United States*, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.
>
> "*Within these limits*, and under the same conditions as the subjects of the most favored nation, *they* shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, ex-

change, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"*They* shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state." (Emphasis supplied)

The word "national" (used in Article IV of the German treaty) has been defined as "A word commonly used in diplomatic language and in treaties to indicate a citizen or subject of a given country." 3 Bouvier's Law Dictionary (Rawle's Third Revision). In this sense the language "*citizens of the United States in Serbia and Serbian subjects in the United States*" used in the American-Serbian treaty and "*Nationals of either High Contracting Party * * * within the territories of the other*" in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503), are indistinguishable in meaning.

The above emphasized language of the Yugoslavian treaty specifically designates and limits the class of persons to whom the treaty applies. It covers both *disposition and acquisition* of property by a citizen of the United States who may be in Yugoslavia or a citizen of Yugoslavia who may be in the United States, but it does not apply to nationals of either country within their own territory. The word "they" in the second and third paragraphs of Article II can have no other antecedent

than the words "citizens of the United States in Serbia and Serbian subjects in the United States." Only "within these limits" may *they* (citizens of the United States in Serbia [Yugoslavia] and Serbian [Yugoslavian] subjects in the United States) enjoy the privileges of the most favored nation.

Language of this kind has taken on a fixed character and well established meaning. *Clark v. Allen*, supra (331 U.S. 503, 516). As shown by the above cited cases, a distinction in treaties between citizens and noncitizens within a country is normal and not uncommon. Treaties are the subject of careful consideration before they are entered into and are drawn by persons competent to choose apt words to express their meaning: *Rocca v. Thompson*, 223 U.S. 317, 332. A "most favored nation" clause is limited to such matters as are within the subject matter of the particular treaty in which it is contained: *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. (2d) 388, 390.

Since the meaning of the language defining the class to whom Article II of the Yugoslavian treaty and Article IV of the German treaty apply is identical, *Clark v. Allen* governs the interpretation of Article II of the Yugoslavian treaty.

II

The application of a treaty and its construction are the peculiar province of the judiciary and not matters of executive or legislative determination.

The question whether a treaty of the United States is to be construed by the executive branch of govern-

ment or otherwise has long since been answered by this court. In *Jones v. Meehan*, 175 U.S. 1, 32, this court said:

> "* * * The construction of treaties is the *peculiar province of the judiciary;* and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. *Wilson v. Wall*, 6 Wall. 83, 89, 18 L. ed. 727, 729; *Reichart v. Felps*, 6 Wall. 160, 18 L. ed. 849; *Smith v. Stevens*, 10 Wall. 321, 327, 19 L. ed. 933, 935; *Holden v. Joy*, 17 Wall. 211, 247, 21 L. ed. 523, 535." (Emphasis supplied)

The application of a treaty to a given case and its construction are, as any other law, questions for the courts: *Hamilton v. Erie R.R. Co.*, 219 N.Y. 343, 114 N.E. 399, 402.

This principle in relation to the interpretation of a treaty by the State Department and a representative of a foreign country is expounded by Secretary of State Knox upon the request of the Mexican Government for an exchange of notes interpreting a provision of the extradition treaty (V Hackworth, Digest of International Law, 399) as follows:

> "The department regrets to say that it deems it inadvisable to exchange notes in the sense proposed in your note, since even if the department did exchange notes setting forth an understanding as suggested by you, such notes would not, so far as the internal affairs of this Government are concerned, have the status either of a treaty or of a law, but would be merely an executive interpretation of the treaty and of the Federal statutes. This would not be binding upon the courts of this country, which

might at any time disregard the agreement incorporated in the notes, in which case it would not be possible for the department to control their decision. * * *"

The note of the State Department of April 24, 1958, interpreting Article II of the Yugoslavian treaty, referred to at page 18 of the petition for certiorari (App. G, pp. 49a-53a of Petition) is contrary to the interpretation of this court of similar language in the German treaty considered in *Clark v. Allen*, supra (331 U.S. 503). However, the note itself concludes by recognizing that it "is not to be considered as having the character of an international agreement or as effecting any modification of the treaty."

Whether the construction placed upon the treaty by the executive branch of government or a foreign country is binding is aptly discussed in *Ex parte Charlton*, 185 F. 880, 886 (aff'd. in 229 U.S. 447), in which it was said:

"* * * Undoubtedly, in view that treaties are made a part of the supreme law of the land by the Constitution which authorizes them, the courts are bound to construe such treaties as they are bound to construe any other law of the land when properly presented for interpretation, and, while the courts will give due consideration to the construction placed upon a treaty by the executive or diplomatic branches of the government, yet upon the courts is placed the duty of acting independently, and to accept full responsibility in determining the construction that is to be given to the treaties. And further, inasmuch as the treaty is by the Constitution made a law of the land, the construction placed upon some of its provisions by the departments of the foreign country with whom the treaty is made, executive, legislative,

or judicial, is not controlling. The fact that our courts' interpretation of the true meaning of such provisions may not be acquiesced in by the foreign government is of no consequence when the question is one of enforcing such treaty provisions in this country, and over a person who is within its jurisdiction."

Like any other law or contract, a treaty must be construed according to its terms. Language contained in a treaty cannot be rejected as surplusage nor can it be said to have been inserted carelessly or inadvisedly. *Foster v. Neilson*, 2 Pet. (U.S.) 253, 308-309. The language of Article II of the Yugoslavian treaty becomes "stilted" only when the construction urged by petitioners is attempted to be applied.

III

The construction and application of Article II of the Yugoslavian treaty is governed by this court's construction of Article IV of the German treaty in Clark v. Allen, 331 U.S. 503.

Because of the similarity of language and identity of meaning of the language used in Article II of the Yugoslavian treaty and Article IV of the German treaty construed in *Clark v. Allen*, supra (331 U.S. 503), the construction placed on Article IV of the German treaty is likewise applicable to Article II of the Yugoslavian treaty.

Neither *Spoya's Estate*, 129 Mont. 83, 282 P. (2d) 452, nor *Ginn's Estate*, — Mont. —, 347 P. (2d) 467 (Pet. for Cert., p. 25), mention the treaty as the basis of decision, and the unreported case of *Succession of Vlaho*

(Pet. for Cert., p. 25) was decided by the District Court for the Parish of Orleans (Pet. for Cert., App. H, p. 69a) on the mistaken premise that the interpretation of treaties was a political and not a judicial question.

Since a determination has already been made that language of similar import and meaning used in Article IV of the German treaty applies only to nationals of one country in the territory of the other and not to nationals of the respective countries living at home, such pronouncement by this court is equally binding with respect to Article II of the Yugoslavian treaty, and the courts and executive and legislative branches of the states and the United States are bound accordingly.

IV

The Bretton Woods Agreement (60 Stat. 1401) does not support petitioners' thesis that the United States by becoming a member of the International Monetary Fund gave acceptance to the Yugoslavian foreign exchange control laws and that a state law requiring reciprocal rights of inheritance is a forbidden entry in matters of foreign affairs.

The first point was answered by Justice Warner in *In re Stoich's Estate*, supra (— Or. —, 349 P. (2d) 255, 267-268), as follows:

> "The Bretton Woods Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense an international recognition that some countries, rightly or wrongly, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria * * *."

The second point was answered by this court in *Clark v. Allen*, supra (331 U.S. 503, 516-517):

> "* * * The challenge to the statute is that it is an extension of state power into the field of foreign affairs, which is exclusively reserved by the Constitution to the Federal Government. That argument is based on the fact that under the statute the right of nonresident aliens to take by succession or testamentary disposition is dependent upon the existence of a reciprocal right on the part of citizens of the United States to take personalty on the same terms and conditions as residents and citizens of the other nation. * * *
>
> "In Blythe v. Hinckley, 180 US 333, 45 L ed 557, 21 S Ct 390, California had granted aliens an unqualified right to inherit property within its borders. The alien claimant was a citizen of Great Britain with whom the United States had no treaty providing for inheritance by aliens in this country. The argument was that a grant of rights to aliens by a State was, in absence of a treaty, a forbidden entry into foreign affairs. The court rejected the argument as being an extraordinary one. The objection to the present statute is equally far fetched."

This issue raised by petitioners having already been authoritatively answered presents no new question for review.

SUMMARY OF ARGUMENT

The construction of Article II of the Treaty of Commerce between the United States of America and Serbia (22 Stat. 963) is governed by this court's interpretation of the similar provision in the German treaty construed in *Clark v. Allen*, 331 U.S. 503. It has long since been

laid down by this court that the construction and application of treaties are matters for judicial and not executive or legislative determination. Because of the similarity of language and import of meaning of Article II of the Yugoslavian treaty and Article IV of the German treaty, the courts of this country and the executive and legislative branches of government in their construction of this article of the Yugoslavian treaty are bound by the decision in *Clark v. Allen*, supra. Similarly also as decided in *Clark v. Allen*, statutes such as ORS 111.070 are not by reason of the Bretton Woods Agreement an invasion of the Federal Government's authority in matters of foreign policy and foreign affairs.

CONCLUSION

For the reasons advanced the respondent submits that the petition for certiorari be denied.

Respectfully submitted,

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APPENDIX A

Oregon Revised Statutes 111.070

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."